

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

CASE NO.: 07-20076-07

Plaintiff,

HONORABLE ROBERT H. CLELAND

VIOLATIONS: 21 U.S.C. § 846(a)(1)

v.

D-7 JERRY GUNTER,

Defendant.

_____ /

STIPULATION AND ORDER WITHDRAWING PENALTY INFORMATION

Through their respective counsel, the parties stipulate and agree to withdraw the Government's Penalty Information for the following reasons:

1. On August 27, 2007, the Government filed a notice of Penalty Information pursuant to 21 U.S.C. § 851(a)(1).
2. On October 3, 2007, Defendant filed a Motion to Strike Penalty Information for the reason that Defendant's conviction for possession of a controlled substance did not become final until after the acts alleged in the Indictment.
3. That pursuant to 21 U.S.C. § 841(b)(1)(B)(iii) a prior felony drug offense may not be used to enhance a penalty unless such offense has become final prior to the commission of the new drug offense.
4. That Court documents provided verify that Defendant's prior offense did not become final until April 17, 2007, after the date of offense alleged in the Indictment.

WHEREFORE, as the parties stipulate and agree that Defendant's prior drug offense did not become final until after the date alleged in the Indictment;

IT IS HEREBY ORDERED that the Government's Notice of Penalty Information is WITHDRAWN.

IT IS FURTHER ORDERED that Defendant's Motion to Strike Penalty Information is Denied as MOOT.

IT IS SO ORDERED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 31, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

We hereby stipulate to entry of the above order:

s/ Noceeba S. Gordon
Noceeba S. Gordon
Assistant U.S. Attorney
211 W. Fort, Suite 2001
Detroit, MI 48226
(313) 226-9676

s/ Patrick Cleary (w/consent)
Patrick Cleary
Attorney for Jerry Gunter
43494 Woodward Ave., Suite 203
Bloomfield Hills, MI 48302
(248) 335-7890